

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 15, 2008 Session

GEORGE MATTHEWS v. JOAN LAWSON

Appeal from the Circuit Court for Davidson County
No. 07C-2169 Walter C. Kurtz, Judge

No. M2007-02569-COA-R3-CV - Filed August 1, 2008

An inmate sued his public defender for malpractice in his criminal trial. The trial court dismissed the case for failure make a partial payment of the filing fee and failure to obtain post-conviction relief. We affirm based upon the inmate's failure to obtain post-conviction relief, an issue that was either not appealed or waived.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, J., and SHARON G. LEE, J., joined.

George Matthews, Nashville, Tennessee, Pro Se.

Andrew D. McClanahan, Attorney General Robert E. Cooper, Jr., and Kevin C. Klein, Nashville, Tennessee, for the appellee, Joan Lawson.

OPINION

Mr. George Matthews sued Assistant Public Defender Joan Lawson for malpractice. Ms. Lawson was appointed to represent Mr. Matthews in a criminal case. While the record is not entirely clear, it appears that Mr. Matthews received a jury trial and was convicted of a drug-related offense. Mr. Matthews's complaint contains a litany of acts or omissions that he contends constitutes ineffective assistance of counsel and malpractice. The trial court found that Mr. Matthews had not met the legal requirements for an inmate to file a civil action in that he failed to file an affidavit with the information required by Tenn. Code Ann. § 41-21-805 and failed to file a partial payment of the filing fee as required by Tenn. Code Ann. § 41-21-807. The trial court gave Mr. Matthews twenty days to comply. Mr. Matthews filed another affidavit, but the court dismissed the case finding that he had not complied with the prior court order because he had not filed a partial payment of the filing fee. Mr. Matthews filed a motion to reconsider along with another Individual Inmate Balance History Report for his inmate trust account. Subsequently, he filed a letter attaching printouts of

docket sheets from two separate lawsuits he filed in the United States District Court for Middle Tennessee which had been dismissed.

On November 5, 2007, the trial court issued an order stating the following:

1. The inmate has no right to appear at a motion hearing. T.C.A. § 41-21-304.
2. It does appear that the inmate/plaintiff finally filed his inmate account on or about August 10, 2007, but for some reason filed no partial payment of any amount. He is and was still in violation of T.C.A. § 41-21-807.
3. This is a legal malpractice case against his appointed lawyer in his criminal case. The Complaint does not indicate that plaintiff obtained post-conviction relief and therefore he has no cause of action against his defense attorney. Gibson v. Trant, 58 S.W.3d 103 (Tenn. 2001).
4. This case is frivolous and all costs are taxed to the plaintiff pursuant to T.C.A. § 41-21-807(c) and T.C.A. § 41-21-816(1). The clerk shall comply with T.C.A. § 41-21-808(b).

Mr. Matthews appealed.

Analysis

The review of factual findings by the trial court is de novo upon the record, accompanied by a presumption of correctness unless a preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). Review of legal issues is de novo with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

While several issues are presented by this case, one principle of law announced by the Tennessee Supreme Court requires the dismissal of this action no matter how the other issues are resolved. In *Gibson v. Trant*, 58 S.W.3d 103 (Tenn. 2001), the Tennessee Supreme Court clearly stated, “we hold that a plaintiff must obtain post-conviction relief in order to maintain a legal malpractice claim against his defense lawyers.” *Id.* at 107. It is clear from Mr. Matthews’s pleadings that he is currently incarcerated as a result of his conviction on charges for which Ms. Lawson served as his appointed attorney. He has not alleged in his complaint or any other filing that he has received post-conviction relief. Even though the trial court made a ruling on this issue, Mr. Matthews does not address it in his brief, preferring to argue that he cannot pay the filing fee and spending most of the brief discussing the merits of his case. Thus, Mr. Matthews either has not appealed this aspect of the trial court’s November 5, 2007 order or has waived the issue. Even if he were to win the appeal as to the fee payment issue, Mr. Matthews’s case would still be dismissed due to his failure to allege that he obtained post-conviction relief.

The judgment of the trial court is affirmed. Costs of appeal are assessed against Mr. George W. Matthews, for which execution may issue, if necessary.

ANDY D. BENNETT, JUDGE